

### REMARKS

This is a reply to the Office Action mailed February 26, 2003, with a shortened statutory response period of three (3) months from the mailing date. As this reply is filed before May 26, 2003, it is timely filed. The Commissioner is hereby authorized to charge any additional fees to Deposit Account number 02-1818.

Applicants respectfully request reconsideration and allowance of the pending claims in view of the Amendments and Remarks below.

A. Status of the Application

Claims 1-18 are pending. At the outset, Applicants wish to point out that the Examiner appears to have overlooked two species elections made in Applicants' previous Response. The styrene/hydrocarbon copolymer recited in claims 6-10 was explicitly elected to be SEBS and the additive used in the second layer set forth in claims 17 and 18 was properly elected to be polypropylene. These two elections, corresponding to species "e" and "m" respectively, are clearly contained on page 2 of the Response filed October 18, 2002. Further supporting this point is that the "e" and "m" of Applicants' Response correspond **exactly** to the list set forth on pages 6 and 7 of the Restriction Requirement mailed September 18, 2002. Therefore, there is no question that the above-mentioned species elections were in fact made. Accordingly, Applicants respectfully request that claims 6-10, 17 and 18 also be considered on the merits in view of the above--previously made--species elections.

B. Rejections under 35 U.S.C. § 112

Claims 2-4 are rejected under 35 U.S.C. §112 as being indefinite. In response, Applicants have amended claim 1 to correct the antecedent basis for the "polyamide" limitation of claims 2 and 3. Moreover, Applicants have amended claim 4 to correct the language cited by the Examiner. Accordingly, Applicants submit that all objections and rejections under 35 U.S.C. §112 have been overcome and should be withdrawn.

C. Rejection under 35 U.S.C. §102(b)

Claims 1-4, 11 and 15 are rejected under 35 U.S.C. §102(b) as being anticipated by *Heilmann* (US 5,928,744). *Heilmann* discloses a multilayer PVC-free tubing which includes an

outer layer which is a cover layer made from a blend of SEBS compound, SEPS compound, a PP/SIS blend or PP/styrene/ethylene/butylene/(propylene) rubber blend, SEBS and/or SEPS. See Col. 8, lines 64-67. As the base layer *Heilmann* discloses suitable materials include, inter alia, styrene/ethylene/butylene rubber with PP, PIP with PP, SEPS with PP, PP and SIS with PP. See Col. 9, lines 1-4. The connection layer consists of SEBS compound with SEBS/SEB and PE copolymer with SEBS/SEB, SEPS/SEP. See Col. 9, lines 5-9.

*Heilmann* clearly does not disclose or even remotely suggest a multilayer tubing having a first layer including all of the components (a)-(d) recited in Claim 1. The Court of Appeals for the Federal Circuit has held that “a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a *single* prior art reference.” *Verdegaal Bros v. Union Oil of California*, 814 F.2d 628, 631 (Fed. Cir. 1988) (*emphasis added*). It is clear the Examiner has not met this standard. Accordingly, Applicants respectfully request that this rejection under 35 U.S.C. §102(b) be withdrawn.

D. Rejection under 35 U.S.C. §103(a)

Claims 1-5 and 11-16 are rejected under 35 U.S.C. §103(a) as being unpatentable over *Mueller* (EP 0564231B1) in view of *Heilmann* and *Ahmed* (US 6,184,290). Applicants submit this rejection is improper and request withdrawal of same.

*Mueller* discloses flexible tubing for medical solution packaging. The tubing includes an outer layer comprising a polymeric material which is selected from the group of polypropylene, ethylene propylene copolymer, or modified ethylene propylene copolymer. See Claim 1. As admitted by the Examiner, “*Mueller* fails to teach (a) the use of polypropylene and ethylene/propylene copolymer in the outer layer, and (b) the use of polyamides and low density polyethylene.” See OA at 6.

*Heilmann* also discloses a PVC-free multilayer tubing, and the use of polypropylene and ethylene/propylene copolymers. *Heilmann*, similarly fails to disclose the use of polyamides and low density polyethylene.

*Ahmed* discloses an elastomeric composition including an unsaturated styrene triblock copolymer and a substantially linear ethylene interpolymers. See Abstract. This composition

shows enhanced thermal stability and processability. Applicants submit that *Ahmed* fails to remedy the deficiencies of *Mueller* and *Heilmann* in several respects.

Contrary to the Examiner's assertions, *Ahmed* does not disclose the production of tubing from compositions including SEBS, low density polyethylene and nylons showing improved stability and processability. The paragraph from *Ahmed* cited in the Office Action makes clear that the composition "can also be further combined with other natural or synthetic resins to improve other properties." See Col. 16, lines 48-50 [emphasis added]. Indeed, there is no question that low density polyethylene and nylons--when being used at all--are nothing more than additional components which may be incorporated. In this regard, low density polyethylene and nylon are certainly not being used for the purpose relied upon by the Examiner to provide the motivation to combine this reference with *Mueller* and *Heilmann*. Furthermore, there is clearly no specific recitation anywhere in *Ahmed* as to the concentration levels of the components being used. Thus, *Ahmed* does not disclose or even remotely suggest Applicants' presently claimed concentration levels.

What the Patent Office clearly has done is to simply piece together the cited references by selectively picking and choosing teachings of each of the references in an attempt to recreate what the claimed invention discloses. Of course, the Federal Circuit has held that it is "impermissible to use the claimed invention as an instruction manual or 'template' to piece together the teachings of the prior art so that the claimed invention is rendered obvious." *In re Fritch*, 23 U.S.P.Q.2d 1780, 1784 (Fed. Cir. 1992). Furthermore, one cannot use "hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention." *In re Fine*, 837 F.2d 1071 (Fed. Cir. 1988). Accordingly, Applicants respectfully request that the obviousness rejection be withdrawn.

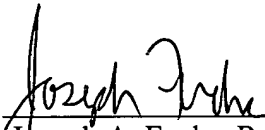
**CONCLUSION**

In view of the foregoing amendments and remarks, Applicants submit that all pending claims are in condition for allowance and respectfully request a notice of the same.

Respectfully submitted,  
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BY



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